

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY



BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
FIBER-TECH ENGINEERING, INC.,) DOCKET NO. EPCRA-09-2003-0023
)
)
RESPONDENT)

ORDER SEEKING CLARIFICATION

As you previously have been notified, I have been designated by the July 8, 2005 Order of the Chief Administrative Law Judge to preside in the above captioned matter.^{1/} This proceeding arises under the authority of Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 11045(c), also referred to as the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), and is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the "Rules of Practice"), 40 C.F.R. §§ 22.1-.32.

This matter was initiated by the United States Environmental Protection Agency's, Region IX ("Complainant's" or the "EPA's") filing of a Complaint against Respondent on September 30, 2003. The Complaint charges Respondent with violating Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372 for failing to submit a Form R for styrene for calendar years 1998, 1999, 2000, and 2001^{2/} to the EPA and the State of California.

^{1/} The file reflects that the parties have participated in the Alternate Dispute Resolution ("ADR") process offered by this office. Pursuant to the Administrative Law Judges's July 6, 2005 Order Recommending Termination of Alternative Dispute Resolution, the above-cited matter has been reassigned to the undersigned to proceed with the litigation process.

^{2/} In the Complaint, Complainant identifies calendar year 2001
(continued...)

The record before me does not reflect that Respondent has filed an answer to the Complaint.^{3/} 40 C.F.R. § 22.15. Rather, the record reflects that on April 6, 2005 Respondent filed with the Regional Hearing Clerk a letter dated February 25, 2005 responding to a letter from Complainant dated January 12, 2005. Respondent's letter indicates that the parties have engaged in settlement discussions. Respondent discusses some of the allegations contained in the Complaint and explains its reasons as to why it believes that the proposed penalty should be significantly reduced.^{4/} Respondent does not state whether or not it requests a hearing.

Thus, the record before me is not clear as to the status of this case. The Rules of Practice governing this proceeding provide that where respondent contests any material fact upon which the complaint is based, contends that the proposed penalty is inappropriate, or contends that it is entitled to judgment as a matter of law, it *shall* file a written answer.^{5/} 40 C.F.R. § 22.15(a). The answer to a complaint shall state whether a hearing is requested.^{6/} 40 C.F.R. § 22.15(b).

^{2/} (...continued)
as the year at issue Count IV, but then cites calendar year 1999 as the year of violation. Complaint ¶ 26.

^{3/} The record contains an Order issued by the Regional Judicial Officer ("RJO") for EPA Region IX on November 14, 2003, directing Respondent to re-file its motion for extension of time for filing an answer to the Complaint. The RJO ordered that if the motion for extension was not re-filed, the answer was due no later than 30 days after service of the complaint.

^{4/} This proceeding is for the assessment of a penalty but Complainant has not specified yet a proposed penalty. The Complaint states that Complainant proposes the assessment of a civil administrative penalty of up to \$27,500 per day for each violation. Complaint at 5.

^{5/} An answer must be filed with the Regional Hearing Clerk within 30 days after service of the complaint. 40 C.F.R. § 22.15(a). Upon failure to file a timely answer to the complaint and after motion, a party may be found to be in default. 40 C.F.R. § 22.17(a).

^{6/} The regulations further provide that if the respondent does
(continued...)

Here, I cannot discern clearly whether Respondent is contesting its liability and/or the appropriateness of the proposed penalty, or is requesting a hearing. In view of both parties' participation in ADR, I must assume that Complainant has waived its right to contest Respondent's failure to file a timely answer. Nonetheless, Respondent must clarify its position as to whether it contests any material fact upon which the Complaint is based, contends that the proposed penalty is inappropriate, or contends that it is entitled to judgment as a matter of law, and whether a hearing before an Administrative Law Judge is requested.^{2/} Accordingly, Respondent is directed to file such clarification statement on or before **August 31, 2005**.

The original and one copy of all pleadings, statements and documents (with any attachments) required or permitted to be filed in this Order (including a ratified Consent Agreement and Final Order) shall be filed with the Regional Hearing Clerk, and copies (with any attachments) shall be sent to the undersigned and all other parties. The parties are advised that E-mail correspondence with the Administrative Law Judge is not authorized. See Section 22.5(a) of the Rules of Practice, 40 C.F.R. § 22.5(a). The statements and information required by this Order to be sent to the Presiding Judge, as well as any other further pleadings, shall be addressed as follows:

^{6/} (...continued)
not request a hearing, a hearing may be held by the Administrative Law Judge if issues appropriate for adjudication are raised in the answer. 40 C.F.R. § 22.15(c).

^{7/} The requirements concerning the contents of the answer are found at Section 22.15(b) of the Rules of Practice, which provides as follows:

The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state: The circumstances or arguments which are alleged to constitute the grounds of any defense; the facts which respondent disputes; the basis for opposing any proposed relief; and whether a hearing is requested.

40 C.F.R. § 22.15(b).

Judge Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., NW
Washington, DC 20460-2001
Telephone: 202-564-6281

Barbara A. Gunning
Administrative Law Judge

Dated: July 27, 2005
Washington, DC